December 14, 2012

Kathleen Partin
Department of Corporations
State of California
1515 K Street, Suite 200
Sacramento, CA 95814-4052

Dear Ms. Partin,

We have been made aware of the December 5, 2012 Bulletin issued by your Department regarding the "Emergence of Third Party Risk Management Companies." While it appears to us to be a response to issues raised in a letter circulated in September 2012 by the Escrow Institute of California we recognize that as a state regulator you may be concerned about anything that could adversely impact business in your state. However the potential "restrictions" placed upon service providers has been deemed necessary and important by banks, consumers and federal regulators in light of the rising costs of closing and escrow fraud. In California for example, rated number one in FinCEN and FBI SARS Report analyses (as having the most reported cases of mortgage fraud in 2011 and through Q2 of 2012) this is clearly a top concern for many lenders and consumers.

As the firm's founder, I have personally advocated for greater risk management with respect to closing transactions since 2002, and have written numerous articles on the subject going back to at least 2007. I formed Secure Settlements in April 2009, well before Dodd-Frank and the CFPB were even created. Having been a closing attorney and later a mortgage industry consultant and attorney, I was concerned about the lack of risk management taken by lenders with respect to the closing process, where their money and critical collateral security documents are at stake, and where consumers can be harmed by errors and omissions. Given the fact that there is no "closing professional" license, that the universe of closing professionals can include attorneys, notaries, realtors, escrow agents, title agent employees and independent contractors, it appeared to me then, and now, that there was an unacceptable risk taken by banks and imposed upon borrowers.

In 2006 I met with warehouse lenders and suggested vetting and the establishment of a uniform database of closing agent data for access by industry players and consumers, as a method of obtaining more information and making better choices with respect to closing professionals, to act as a deterrent to fraudsters, and to potentially establish an underwriting basis for the creation and implementation of a real insurance product to replace the closing letter issued by title underwriters which offers limited coverage for losses to banks and consumers.

At that time the industry was not prepared to adopt a new process. I then proceeded to reach out to the major title underwriters, with whom I had extensive conversations between 2008-2010 about adopting my concept for a vetting process and the possibility for new insurance. I met with the senior management of First American, Fidelity, Old Republic, Stewart and the now defunct NJ Title. These entities expressed support for my idea and the possibility of the insurance product and encouraged me to bring the concept to the warehouse community as they have set the requirements for a CPL/CIL in residential mortgage transactions.

In the past 18 months or more I have had extensive discussions with the warehouse banks, who expressed serious concern over what they felt was a non-uniform approach to risk management and the rising cost of fraud affecting them and their lender clients. Thereafter in January 2012, well before CFPN Bulletin 2012-3, we were already beta testing our systems with data from warehouse banks, using their approved agent lists, and negotiating the terms of agreements with them to act as a third party risk management service replacing or enhancing their internal risk management staff. As you know, many warehouse banks already have had for some time a process by which closing agents would have to be approved by them before they would wire proceeds to their trust accounts.

When the April CFPB Bulletin was released, having studied the issue for almost a decade, it was my belief which has been confirmed with a discussion with the author of the Bulletin, that the CFPB was merely giving teeth to guidelines and recommendations for non-bank lender risk management in this area dating back as far as 2001. The OCC has had requirements for supervised institutions since November 2001, FNMA has offered guidance to non-banks since 2005, and even the NCUA has recommended that credit unions adopted stricter standards for closing agent vetting since 2007. Therefore no one in the industry should be surprised by the CFPB bulletin or a call for greater management of closing agent risk.

Thus to summarize, SSI is not a creature of the CFPB or the April 2012 Bulletin, although we believe that our process meets the expectations of the CFPB with respect to addressing closing agent risk management, as part of the overall concern of third party service provider risk. We are acting instead under contracts to warehouse banks who are advising their lender clients to have agents vetted or they will not wire funds to them after a set date. Our motivation for operating has been greater risk management, not CFPB.

With respect to some of the issues raised in your Bulletin, as they may be directed to the operations of our company, please note the following:

**ESCROW LAW RESTRICTIONS ON PAYING FOR REFERRALS**

- We are a risk management firm; we do not maintain a “referral list,” although our database could result in an agent gaining or losing business. Warehouse lenders and banks outsource third party service provider risk management obligations (required by OCC, CFPB and NCUA) to our independent vetting firm. We conduct comprehensive background checks and ongoing monitoring and establish a risk rating based upon information voluntarily provided to us by agents. We do not guarantee anyone business, nor are we paid a “referral fee” for business. Lastly we are not governed by RESPA. We are no different than an appraisal management company, with whom appraisers contract to help lenders meet regulatory obligations for appraisal management.
- The fees we collect cover actual services performed, extensive personal and business background checks and risk assessments, as well as ongoing monitoring and reporting.
- CA Financial Code 17420 prohibits banks, brokers or mortgage solicitors to pay a third party to deliver it business. We are paid by agents to cover the cost of vetting for the privilege of handling bank mortgage proceeds and collateral security documents.
- We do not share fees with banks or anyone else. All fees are for actual services rendered.

**BUYERS CHOICE ACT**

- This law covers “sellers” of real estate and not lenders and consumers, for whom SSI performs the service.

- Neither Secure Settlements nor its clients dictate who may represent a consumer in connection with a real estate transaction. However, Secure Settlements' bank clients do have the right to establish reasonable, non-discriminatory procedures to safeguard their money and documents, including a process to verify identity, credentials and risk status of anyone who acts on their behalf at a closing. In the event a consumer insists on using an agent or attorney who is not vetted, refuses to be vetted, or is determined to be a risk, that individual can represent the consumer in all contract negotiations, loan approval issues, and related matters – including attending the closing. They may not however be permitted to disburse funds or handle the closing documents that must be recorded and/or returned to the lender to meet regulatory, compliance, legal and risk issues important to the bank and subsequent investors.

**RESPA PROHIBITION ON KICK-BACKS (i.e. Section 8)**

- SSI is not subject to RESPA as we do not provide a settlement service rather we evaluate settlement service providers for risk to protect banks and consumers from losses from fraud and otherwise surrounding the closing transaction.
- We do not receive nor do we pay "kickbacks" to anyone for the "referral of settlement services."
- No one at the CFPB, OCC, FDIC or any other federal government agency with whom we have met in Washington and explained our program, has ever indicated that the SSI process violates RESPA, or in fact any federal law government the real estate and mortgage settlement process.

**UNFAIR BUSINESS PRACTICES**

- Neither SSI nor any lender with which we do business, require an agent to "pay for business" or "pay to play." They are asked to pay a fee to cover the cost of a risk assessment to determine whether a bank will agree to conduct business with these firms and individuals. In fact an agent can pay their fee and be "watch-listed" due to licensing issues and other high risk issues. This is very similar to a SAFE Act requirement for mortgage loan originators, which we know that your Department fully supports.

- Our vetting process was designed to avoid subjectivity. It applies the same 17 point data evaluation standard to everyone, which in fact eliminates the subjective and non-uniform approaches applied today bank by bank, state by state. The risk factors we

evaluate are logical, where risk is discovered it is subject to appeal and explanation, and ultimately we do not "approve" or "certify" anyone, but merely provide the data to lenders so that they can make their own decisions about who they wish to act as their representatives at a closing.

- Secure Settlements is not a licensing agency. We do not measure competency and skill. Our services do not take the place of those licensing authorities which establish criteria for attorneys, notaries, realtors and title producers who position themselves as experts in their fields. Secure Settlements requires proof of proper licensing as a part of its risk management program. Secure Settlements is also not a trade association. Trade associations such as the ABA, ALTA, NAR, and National Association of Notaries provide member benefits, lobbying and other valuable resources to assist their membership. We recommend them and intend to work collaboratively with them for the benefit of consumers and the mortgage industry as a whole.

- SSI is not a government entity, nor are we endorsed by any government entity; however we strongly support government efforts to protect consumers and establish reasonable risk management processes and procedures to reduce the risk of financial harm to all parties to mortgage and real estate transactions. We are particularly supportive of the efforts of HUD and the CFPB to protect consumers from harm caused by parties who engage in negligence and fraud in connection with mortgage transactions. Furthermore, we have never asserted we are a regulator nor is that our intention. We offer best practice suggestions and establish risk management rules which meet consumer and banking industry needs for transparency and risk management. These standards have been developed after studying years of claims of loss attributable to escrow and closing agent defalcations and negligence. We cannot enforce them, we can only suggest them.

- The information we request when registering and vetting agents is necessary to conduct a meaningful and accurate identity verification and background check. Our website uses the latest technology for the secure transmission of data. Once the data reaches us, we adhere to strict data privacy rules, with limited staff access and no distribution or sharing of personal data with any third party. We also have cyber security and errors and omissions insurance to cover any losses, although we have not experienced nor do we expect to experience any event that would put your members' personal data at risk. We continue to enhance our systems and always respect agents'

right to privacy and the expectation of the utmost care being taken with an agent's information.

**CONSUMER PROTECTION**

- The cost of mortgage fraud in the last several years has been unacceptable to banks and to consumers. Estimated Mortgage Fraud Losses in 2011 and 2012 (FBI Records and Estimates) were $11 Billion - $13 Billion. Estimated mortgage fraud losses attributable to escrow and closing agents (FBI Records): 15% - or $1.65-1.95 Billion Annually. The segment with the highest growth rate in fraud (FinCEN Report, July 2012) has been escrow and closing agents, with an estimated 20% growth in 2011. Clearly, mortgage fraud, including fraud related to escrow and closing agents, has increased not decreased in the past 5 years despite efforts to address the risk, and I have seen no demonstrable evidence of reduction in fraud that can be related to enhancements in licensing, association membership or even bond and insurance requirements (where they exist).

- The mortgage industry spends upwards of $1 Billion annually to fight mortgage fraud on the front end of the process (origination, processing and underwriting)(MBA Figures 2011). There is no uniform approach to addressing risk at the back end of the process (closing) other than reliance on the Closing Insurance Letter/Closing Protection Letter (in those states where it is permitted). The CIL/CPL is not risk management, is not insurance, does not adequately cover the consumer and lender from all losses, and is reactive not proactive.

- Licensing bodies, even those for lawyers, do not actively supervise attorney activity, they only discipline attorneys when and if they fail to meet ethics rules or engage in fraud. While it is true that state courts do establish trust account guidelines, the courts cannot "supervise" trust accounts in the sense of verifying their use, they only establish rules for their use and "supervise" in the sense that they have the power to regulate and discipline failures to meet their requirements. When a misuse of trust funds is reported, by then it is too late.

- Depository banks are required to and do report "suspicious activity" under AML rules, such as large cash deposits, but they have no mechanism to identify whether

funds merely removed from an account are done improperly as they are not privy to the closing details.

- The CPL covers theft of funds, after the fact. It is not preventative, it is reactive. It is also not insurance and is not a guarantee that banks and consumers will be made whole. Its scope is limited and does not cover all bad acts an attorney might engage in, such as conspiracy, willful blindness and also negligence that does not cause title to be impaired.

- Malpractice insurance is also reactive, it is not risk management. It comes into play after an event. It is also claims made, and because no lender monitors policies today this means that if an attorney fails to pay a premium or cancels the policy, even after an event, but before a claim is made, there is no coverage. Finally, malpractice coverage also does not cover intentional acts.

- In three public opinion polls commissioned by SSI in the past 24 months, consumers have indicated support for programs that would manage real estate attorney risk, and also have indicated that they believe attorneys are not sufficiently regulated for the potential harm they can cause at a closing.

In the absence of greater risk management, lenders remain at risk from fake title agencies and settlement companies, theft of mortgage proceeds, improper disbursements of mortgage proceeds, failure to follow closing instructions and properly document closing details, failure to disclose cash outside of closing, failure to disclose true source of funds brought to closing, conspiracies to commit fraud: short sale fraud, foreclosure rescue scams, undisclosed intervening transaction flips, straw buyers and identity thefts, negligent document handling, failure to properly record instruments and failure to return closing packages. The result?: repurchases, audit issues, litigation and billions in losses.

In the absence of greater risk management, consumers remain at risk from fake title agencies and settlement companies, theft of mortgage proceeds, theft of consumer contributions to closing, improper disbursements of mortgage proceeds, failure to pay off prior liens and judgments after closing, failure to follow closing instructions and properly document closing details, negligent document handling, failure to properly record instruments and failure to return closing packages. The result?: clouds on title, litigation costs, and untold losses.

The objections we have heard from agents in California in particular can be summarized as follows:

- "We don't need more risk management"
- "We are already vetted"
- "We are licensed"
- "We belong to an association"
- "Our personal data is private"
- "We don't cause fraud, mortgage brokers do"
- "Vetting costs too much ($199/$99 for a year)"

By end of 2012, the MBA estimates lenders will have wired $7.4 trillion dollars into the trust accounts of escrow and closing agents with whom they have little or no relationship, and every day thousands of consumers arrive at mortgage closing ceremonies conducted by individuals who have no uniform standards of care, no uniform best practices, uniform licensing, nor comprehensive identity and credential verification.

We are not a fly-by-night company created to take advantage of anyone. Our management team and board of advisors are comprised of some of the most experienced and talented individuals in the industry, including a former chairperson of the MBA, a past president of ALTA, a former chair of TIPAC and thirty year title insurance executive, the former Director of FHFA, a former state deputy commissioner of banking, a former senior HUD executive, a former state insurance commissioner, and legal, banking and title industry leaders. We have had productive educational and fact exchanging meetings with the CFPB, OCC, NCUA, FDIC, the National Notary Association and the National Association of Realtors as well as state and federal policymakers. We are also in discussions with committee members of the National Association of Insurance Commissioners regarding the weaknesses surrounding closing protection letters and better consumer protection from escrow theft and fraud.

We welcome a meeting regarding this issue, and would be happy to participate in a

constructive and mutually respectful dialogue in person or by phone to review these matters in further detail. I hope that by doing so we can raise your comfort level regarding who we are and what we are doing.

Respectfully,

Andrew Liput
President & CEO
ALL:pm

cc: SSI Advisory Board
Lowenstein Sandler PC